

AMENDED IN SENATE AUGUST 20, 2007

AMENDED IN SENATE JULY 16, 2007

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AMENDED IN ASSEMBLY MAY 25, 2007

AMENDED IN ASSEMBLY APRIL 23, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1710

Introduced by Assembly Members Swanson, Davis, and Dymally
(Principal coauthor: Assembly Member Leno)
(Principal coauthor: Senator Yee)

February 28, 2007

An act to amend Sections 203, 203.1, 204, 210, 215, 220, and 2699.5 of, and to add Section 201.3 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, as amended, Swanson. Temporary services employees: wages.

Existing law requires that all wages be paid twice during each calendar month, that wages be paid immediately upon discharge, and that wages be paid within 72 hours if an employee quits, with certain exceptions.

This bill would provide that for employees of temporary services employers, as defined, wages shall be paid weekly, or daily if an employee is assigned to a client, as defined, on a day-to-day basis or to a client engaged in a trade dispute.

Existing law provides that if an employer fails to secure payment of workers' compensation, the employee may sue that employer for damages incurred in the course of employment.

This bill would provide that if an employee of a temporary services employer is assigned to a client, and neither the client nor the temporary services employer has secured payment for workers' compensation, the employee may sue both the client and the temporary services employer.

Existing law imposes civil and criminal penalties on an employer who violates certain wage payment requirements.

This bill would apply these civil and criminal penalties to the wage payment requirements established by this bill. Because the bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 201.3 is added to the Labor Code, to
2 read:

3 201.3. (a) For purposes of this section, the following
4 definitions apply:

5 (1) "Temporary services employer" means an employing unit
6 that contracts with clients or customers to supply workers to
7 perform services for the clients or customers and that performs all
8 of the following functions:

9 (A) Negotiates with clients and customers for matters such as
10 the time and place where the services are to be provided, the type
11 of work, the working conditions, and the quality and price of the
12 services.

13 (B) Determines assignments or reassignments of workers, even
14 if workers retain the right to refuse specific assignments.

15 (C) Retains the authority to assign or reassign a worker to
16 another client or customer when the worker is determined
17 unacceptable by a specific client or customer.

1 (D) Assigns or reassigns workers to perform services for clients
2 or customers.

3 (E) Sets the rate of pay of workers, whether or not through
4 negotiation.

5 (F) Pays workers from its own account or accounts.

6 (G) Retains the right to hire and terminate workers.

7 (2) "Temporary services employer" does not include any of the
8 following:

9 (A) A bona fide nonprofit organization that provides temporary
10 service employees to clients.

11 (B) A farm labor contractor, as defined in subdivision (b) of
12 Section 1682.

13 (C) A garment manufacturing employer, which, for purposes
14 of this section, has the same meaning as "contractor," as defined
15 in subdivision (d) of Section 2671.

16 (3) "Employing unit" has the same meaning as defined in
17 Section 135 of the Unemployment Insurance Code.

18 (4) "Client" and "customer" means the person with whom a
19 temporary services employer has a contractual relationship to
20 provide the services of one or more individuals employed by the
21 temporary services employer.

22 (b) (1) Except as provided in paragraphs (2) to (5), inclusive,
23 if an employee of a temporary services employer is assigned to
24 work for a client, that employee's wages are due and payable no
25 less frequently than weekly, regardless of when the assignment
26 ends, and work performed during any calendar week shall be due
27 and payable not later than the regular payday of the following
28 calendar week. A temporary services employer shall be deemed
29 to have timely paid wages upon completion of an assignment if
30 wages are paid in compliance with this subdivision.

31 (2) If an employee of a temporary services employer is assigned
32 to work for a client on a day-to-day basis for one day at a time,
33 the employee reports to or assembles at the office of the temporary
34 services employer or other location and is dispatched to a client's
35 worksite each day and returns to or reports to the office of the
36 temporary services employer or other location upon completion
37 of the assignment, and the work performed is not executive,
38 administrative, or professional, as defined in the wage orders of
39 the Industrial Welfare Commission, and is not clerical, that

1 employee's wages are due and payable at the end of each day,
2 regardless of when the assignment ends.

3 (3) If an employee of a temporary services employer is assigned
4 to work for a client engaged in a trade dispute, that employee's
5 wages are due and payable at the end of each day, regardless of
6 when the assignment ends.

7 (4) If an employee of a temporary services employer is assigned
8 to work for a client and is discharged by the temporary services
9 employer or leasing employer, wages are due and payable as
10 provided in Section 201.

11 (5) If an employee of a temporary services employer is assigned
12 to work for a client and quits his or her employment with the
13 temporary services employer, wages are due and payable as
14 provided in Section 202.

15 (c) If a client has not secured the payment of workers'
16 compensation as provided in ~~subdivision (a) of~~ Section 3700 for
17 all employees, including employees of a temporary services
18 employer assigned to that client, and that client contracts with a
19 temporary services employer that has not secured the payment of
20 workers' compensation as provided in ~~subdivision (a) of~~ Section
21 3700 for its employees, both the client and the temporary services
22 employer shall be jointly and ~~severably~~ *severally* liable for damages
23 suffered in the course of employment by any employee of a
24 temporary services employer assigned to work for that client, and
25 that employee may bring an action at law against both the client
26 and the temporary services employer, as provided in Section 3706.

27 (d) A violation of this section shall result in civil penalties as
28 provided in Section 203 and any other penalties available at law.

29 (e) Nothing in this section shall be interpreted to limit any rights
30 or remedies otherwise available under state or federal law.

31 SEC. 2. Section 203 of the Labor Code is amended to read:

32 203. If an employer willfully fails to pay, without abatement
33 or reduction, in accordance with Sections 201, 201.3, 201.5, 202,
34 and 205.5, any wages of an employee who is discharged or who
35 quits, the wages of the employee shall continue as a penalty from
36 the due date thereof at the same rate until paid or until an action
37 therefor is commenced; but the wages shall not continue for more
38 than 30 days. An employee who sequesters or absents himself or
39 herself to avoid payment to him or her, or who refuses to receive
40 the payment when fully tendered to him or her, including any

1 penalty then accrued under this section, is not entitled to any benefit
2 under this section for the time during which he or she so avoids
3 payment.

4 Suit may be filed for these penalties at any time before the
5 expiration of the statute of limitations on an action for the wages
6 from which the penalties arise.

7 SEC. 3. Section 203.1 of the Labor Code is amended to read:

8 203.1. If an employer pays an employee in the regular course
9 of employment or in accordance with Section 201, 201.3, 201.5,
10 201.7, or 202 any wages or fringe benefits, or both, by check, draft
11 or voucher, which check, draft or voucher is subsequently refused
12 payment because the employer or maker has no account with the
13 bank, institution, or person on which the instrument is drawn, or
14 has insufficient funds in the account upon which the instrument is
15 drawn at the time of its presentation, so long as the same is
16 presented within 30 days of receipt by the employee of the check,
17 draft or voucher, those wages or fringe benefits, or both, shall
18 continue as a penalty from the due date thereof at the same rate
19 until paid or until an action therefor is commenced. However, those
20 wages and fringe benefits shall not continue for more than 30 days
21 and this penalty shall not apply if the employer can establish to
22 the satisfaction of the Labor Commissioner or an appropriate court
23 of law that the violation of this section was unintentional. This
24 penalty also shall not apply in any case in which an employee
25 recovers the service charge authorized by Section 1719 of the Civil
26 Code in an action brought by the employee thereunder.

27 SEC. 4. Section 204 of the Labor Code is amended to read:

28 204. (a) All wages, other than those mentioned in Section 201,
29 201.3, 202, 204.1, or 204.2, earned by any person in any
30 employment are due and payable twice during each calendar month,
31 on days designated in advance by the employer as the regular
32 paydays. Labor performed between the 1st and 15th days, inclusive,
33 of any calendar month shall be paid for between the 16th and the
34 26th day of the month during which the labor was performed, and
35 labor performed between the 16th and the last day, inclusive, of
36 any calendar month, shall be paid for between the 1st and 10th
37 day of the following month. However, salaries of executive,
38 administrative, and professional employees of employers covered
39 by the Fair Labor Standards Act, as set forth pursuant to Section
40 13(a)(1) of the Fair Labor Standards Act, as amended through

1 March 1, 1969, in Part 541 of Title 29 of the Code of Federal
2 Regulations, as that part now reads or may be amended to read at
3 any time hereafter, may be paid once a month on or before the
4 26th day of the month during which the labor was performed if
5 the entire month's salaries, including the unearned portion between
6 the date of payment and the last day of the month, are paid at that
7 time.

8 (b) (1) Notwithstanding any other provision of this section, all
9 wages earned for labor in excess of the normal work period shall
10 be paid no later than the payday for the next regular payroll period.

11 (2) An employer is in compliance with the requirements of
12 subdivision (a) of Section 226 relating to total hours worked by
13 the employee, if hours worked in excess of the normal work period
14 during the current pay period are itemized as corrections on the
15 paystub for the next regular pay period. Any corrections set out in
16 a subsequently issued paystub shall state the inclusive dates of the
17 pay period for which the employer is correcting its initial report
18 of hours worked.

19 (c) However, when employees are covered by a collective
20 bargaining agreement that provides different pay arrangements,
21 those arrangements shall apply to the covered employees.

22 (d) The requirements of this section shall be deemed satisfied
23 by the payment of wages for weekly, biweekly, or semimonthly
24 payroll if the wages are paid not more than seven calendar days
25 following the close of the payroll period.

26 SEC. 5. Section 210 of the Labor Code is amended to read:

27 210. (a) In addition to, and entirely independent and apart
28 from, any other penalty provided in this article, every person who
29 fails to pay the wages of each employee as provided in Sections
30 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
31 subject to a civil penalty as follows:

32 (1) For any initial violation, one hundred dollars (\$100) for each
33 failure to pay each employee.

34 (2) For each subsequent violation, or any willful or intentional
35 violation, two hundred dollars (\$200) for each failure to pay each
36 employee, plus 25 percent of the amount unlawfully withheld.

37 (b) The penalty shall be recovered by the Labor Commissioner
38 as part of a hearing held to recover unpaid wages and penalties
39 pursuant to this chapter or in an independent civil action. The
40 action shall be brought in the name of the people of the State of

1 California and the Labor Commissioner and the attorneys thereof
2 may proceed and act for and on behalf of the people in bringing
3 these actions. Twelve and one-half percent of the penalty recovered
4 shall be paid into a fund within the Labor and Workforce
5 Development Agency dedicated to educating employers about
6 state labor laws, and the remainder shall be paid into the State
7 Treasury to the credit of the General Fund.

8 SEC. 6. Section 215 of the Labor Code is amended to read:

9 215. Any person, or the agent, manager, superintendent or
10 officer thereof, who violates any provision of Section 201.3, 204,
11 204b, 205, 207, 208, 209, or 212 is guilty of a misdemeanor. Any
12 failure to keep posted any notice required by Section 207 is prima
13 facie evidence of a violation of these sections.

14 SEC. 7. Section 220 of the Labor Code is amended to read:

15 220. (a) Sections 201.3, 201.5, 201.7, 203.1, 203.5, 204, 204a,
16 204b, 204c, 204.1, 205, and 205.5 do not apply to the payment of
17 wages of employees directly employed by the State of California.
18 Except as provided in subdivision (b), all other employment is
19 subject to these provisions.

20 (b) Sections 200 to 211, inclusive, and Sections 215 to 219,
21 inclusive, do not apply to the payment of wages of employees
22 directly employed by any county, incorporated city, or town or
23 other municipal corporation. All other employments are subject
24 to these provisions.

25 SEC. 8. Section 2699.5 of the Labor Code is amended to read:

26 2699.5. The provisions of subdivision (a) of Section 2699.3
27 shall apply to any alleged violation of the following provisions:
28 subdivision (k) of Section 96, Section 98.6, 201, 201.3, 201.5,
29 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
30 205.5, 206, 206.5, 208, 209, or 212, subdivision (d) of Section
31 213, Section 221, 222, 222.5, 223, or 224, subdivision (a) of
32 Section 226, Section 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3,
33 230.4, 230.7, 230.8, or 231, subdivision (c) of Section 232,
34 subdivision (c) of Section 232.5, Section 233, 234, 351, 353, or
35 403, subdivision (b) of Section 404, Section 432.2, 432.5, 432.7,
36 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750,
37 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,
38 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, or 1153, subdivision
39 (c) or (d) of Section 1174, Section 1194, 1197, 1197.1, 1197.5, or
40 1198, subdivision (b) of Section 1198.3, Section 1199, 1199.5,

1 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298,
2 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2,
3 1392, 1683, or 1695, subdivision (a) of Section 1695.5, Section
4 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
5 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, or 1700.47,
6 paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e)
7 of Section 1701.4, subdivision (a) of Section 1701.5, Section
8 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,
9 1815, 2651, or 2673, subdivision (a) of Section 2673.1, Section
10 2695.2, 2800, 2801, 2802, 2806, or 2810, subdivision (b) of Section
11 2929, or Section 3095, 6310, 6311, or 6399.7.

12 SEC. 9. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.